

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

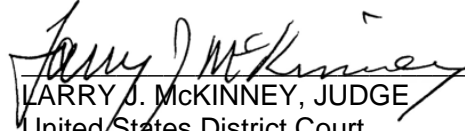
JUSTIN KERR,	)	
	)	
Plaintiff,	)	
vs.	)	NO. 1:10-cv-00141-LJM-TAB
	)	
ROGER CLARK,	)	
SHELBY COUNTY SHERIFF,	)	
	)	
Defendants.	)	

**ENTRY AND ORDER**

Plaintiff brings a 42 U.S.C.1983 cause against the Shelby County Sheriff and a deputy. The Sheriff has filed a Motion for Judgment on the pleadings. After Monell v. Dep't of Social Services of City of New York, 436 U.S. 658,690 (1978), the Sheriff cannot be held liable under the respondeat superior theory propounded by the Plaintiff Kerr in Paragraph 4 of his complaint. Simply stated, no vicarious liability exists.

Plaintiff Kerr has attached an unsworn affidavit to his response which this Court finds raises no disputed allegation of fact on personal knowledge. An unsworn affidavit is insufficient. Even so, Kerr's only attempt to allege any personal conduct on the part of the Sheriff is his conclusary statement that the Sheriff had acquiesced in the deputy's behavior because the deputy had been drinking on duty and had been belligerent prior to the incident complained of. Conclusions do not raise factual issues. For these reasons, the Sheriff of Shelby County is entitled to Judgment on the Pleadings for any 42 U.S.C. claim brought against him in the complaint before the Court and Motion for Partial Judgment on the pleadings is GRANTED.

IT IS SO ORDERED this 05/17/2010

  
LARRY J. McKINNEY, JUDGE  
United States District Court  
Southern District of Indiana

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